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7

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/08-70

13 **A PLUS SMOG TEST ONLY**
7520 International Boulevard, #B
Oakland, California 94621
14 **SONG SOO JIN, OWNER**

A C C U S A T I O N
S M O G C H E C K

15 Automotive Repair Dealer Registration
No. AG 228980
Smog Check Test Only Station License
16 No. TG 228980,

17 and

18 **MICHAEL DAO**
24219 Silva Avenue
19 Hayward, California 94544

20 Advanced Emission Specialist Technician
License No. EA 032988

21 Respondents.
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23
24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

26 1. Complainant brings this Accusation solely in her official capacity as the
27 Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 **Automotive Repair Dealer Registration**

2 2. On or about July 30, 2003, the Bureau issued Automotive Repair Dealer
3 Registration Number AG 228980 ("registration") to Song Soo Jin ("Respondent A Plus"), doing
4 business as A Plus Smog Test Only. The registration will expire on July 31, 2008, unless
5 renewed.

6 **Smog Check Test Only Station License**

7 3. On or about September 3, 2003, the Bureau issued Smog Check Test Only
8 Station License Number TG 228980 ("station license") to Respondent A Plus. The station
9 license will expire on July 31, 2008, unless renewed.

10 **Advanced Emission Specialist Technician License**

11 4. On a date uncertain in 2001, the Bureau issued Advanced Emission
12 Specialist Technician License Number EA 032988 ("technician license") to Michael Dao
13 ("Respondent Dao"). The technician license will expire on August 31, 2009, unless renewed.

14 **STATUTORY PROVISIONS**

15 5. Section 9884.7 of the Business and Professions Code ("Code"), states, in
16 pertinent part, as follows:

17 (a) The director, where the automotive repair dealer cannot show there was
18 a bona fide error, may refuse to validate, or may invalidate temporarily or
19 permanently, the registration of an automotive repair dealer for any of the
20 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

21 (1) Making or authorizing in any manner or by any means whatever any
22 statement written or oral which is untrue or misleading, and which is known, or
23 which by the exercise of reasonable care should be known, to be untrue or
misleading.

24 (4) Any other conduct which constitutes fraud.

25 (b) Except as provided for in subdivision (c), if an automotive repair
26 dealer operates more than one place of business in this state, the director pursuant
27 to subdivision (a) shall only invalidate temporarily or permanently the registration
of the specific place of business which has violated any of the provisions of this
chapter. This violation, or action by the director, shall not affect in any manner
the right of the automotive repair dealer to operate his or her other places of
28 business.

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1 (c) Notwithstanding subdivision (b), the director may invalidate
2 temporarily or permanently, the registration for all places of business operated in
3 this state by an automotive repair dealer upon a finding that the automotive repair
4 dealer has, or is, engaged in a course of repeated and willful violations of this
5 chapter, or regulations adopted pursuant to it.

6 6. Code section 9884.13 provides, in pertinent part, that the expiration of a
7 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
8 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
9 registration temporarily or permanently.

10 7. Code section 477 provides, in pertinent part, that "Board" includes
11 "bureau," "commission," "committee," "department," "division," "examining committee,"
12 "program," and "agency." "License" includes certificate, registration or other means to engage
13 in a business or profession regulated by the Code.

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part,
15 that the Director has all the powers and authority granted under the Automotive Repair Act for
16 enforcing the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

18 The director may suspend, revoke, or take other disciplinary action against
19 a license as provided in this article if the licensee, or any partner, officer, or
20 director thereof, does any of the following:

21 (a) Violates any section of this chapter [the Motor Vehicle Inspection
22 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
23 pursuant to it, which related to the licensed activities.

24 (c) Violates any of the regulations adopted by the director pursuant to this
25 chapter.

26 (d) Commits any act involving dishonesty, fraud, or deceit whereby
27 another is injured.

28 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part,
that the expiration or suspension of a license by operation of law, or by order or decision of the
Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall
not deprive the Director of jurisdiction to proceed with disciplinary action.

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1 11. Section 44072.8 of the Health and Safety Code states:
2 “When a license has been revoked or suspended following a hearing under this
3 article, any additional license issued under this chapter in the name of the licensee may be
4 likewise revoked or suspended by the director.”

5 **COST RECOVERY**

6 12. Code section 125.3 provides, in pertinent part, that a Board may request
7 the administrative law judge to direct a licentiate found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 **SURVEILLANCE OPERATION - SEPTEMBER 6, 2007**

11 13. On or about September 6, 2007, the Bureau performed a videotaped
12 surveillance at Respondent A Plus’s facility. The surveillance operation and information
13 obtained from the Bureau’s Vehicle Information Database (“VID”) revealed that between 1603
14 hours and 1713 hours, Respondent Dao performed two (2) smog inspections that resulted in the
15 issuance of the electronic certificates of compliance for the vehicles set forth in Table One,
16 below, certifying that he had tested and inspected the vehicles and that the vehicles were in
17 compliance with applicable laws and regulations. In fact, Respondent Dao performed the smog
18 inspections using the clean-piping¹ method by using the tail pipe emissions of vehicles other than
19 the vehicles being certified in order to issue the certificates of compliance. The vehicles certified
20 were not in the test bay at the time of the smog inspections.

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27 1. “Clean-piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

Table One

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
9/6/2007 1603 hours to 1610 hours	1980 Toyota pickup Lic. No. 7J38915	Nissan 240SX	MU557514C
9/6/2007 1705 hours to 1713 hours	1989 Ford Bronco II Lic. No. 5FCE780	GMC pickup with camper shell Lic. No. 4L75152	MU557515C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent A Plus has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 6, 2007, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading by issuing the electronic certificates of compliance for the vehicles set forth in Table One, above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean-piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent A Plus has subjected her registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about September 6, 2007, she committed acts which constitute fraud by issuing the electronic certificates of compliance for the vehicles set forth in Table One, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

16. Respondent A Plus has subjected her station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 6, 2007,

1 regarding the electronic certificates of compliance and the vehicles set forth in Table One, above,
2 she violated sections of that Code, as follows:

3 a. **Section 44012, subdivision (f):** Respondent A Plus failed to perform
4 emission control tests on the vehicles in accordance with procedures prescribed by the
5 department.

6 b. **Section 44015, subdivision (b):** Respondent A Plus issued the
7 electronic certificates of compliance for those vehicles without properly testing and inspecting
8 the vehicles to determine if they were in compliance with section 44012 of that Code.

9 c. **Section 44059:** Respondent A Plus willfully made false entries for the
10 electronic certificates of compliance by certifying that the vehicles had been inspected as
11 required when, in fact, they had not.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

14 17. Respondent A Plus has subjected her station license to discipline under
15 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 6, 2007,
16 regarding the electronic certificates of compliance and the vehicles set forth in Table One, above,
17 she violated sections of the California Code of Regulations, title 16, as follows:

18 a. **Section 3340.24, subdivision (c):** Respondent A Plus falsely or
19 fraudulently issued the electronic certificates of compliance for those vehicles without
20 performing bona fide inspections of the emission control devices and systems on the vehicles as
21 required by Health and Safety Code section 44012.

22 b. **Section 3340.35, subdivision (c):** Respondent A Plus issued the
23 electronic certificates of compliance for those vehicles even though the vehicles had not been
24 inspected in accordance with section 3340.42 of that Code.

25 c. **Section 3340.42:** Respondent A Plus failed to conduct the required
26 smog tests and inspections on the vehicles in accordance with the Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit)**

3 18. Respondent A Plus has subjected her station license to discipline under
4 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 6, 2007,
5 regarding the electronic certificates of compliance and the vehicles set forth in Table One, above,
6 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
7 the electronic certificates of compliance for those vehicles when, in fact, the vehicles had not
8 been properly tested and inspected, thereby depriving the People of the State of California of the
9 protection afforded by the Motor Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program)**

12 19. Respondent Dao has subjected his technician license to discipline under
13 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 6, 2007,
14 regarding the electronic certificates of compliance and the vehicles set forth in Table One, above,
15 he violated sections of that Code, as follows:

16 a. **Section 44012, subdivision (f):** Respondent Dao failed to determine that
17 all emission control devices and systems required by law were installed and functioning correctly
18 on those vehicles in accordance with test procedures.

19 b. **Section 44032:** Respondent Dao failed to perform tests of the emission
20 control devices and systems on those vehicles in accordance with section 44012 of that Code, in
21 that the vehicles had been clean-piped.

22 c. **Section 44059:** Respondent Dao entered false information into the
23 Emission Inspection System ("EIS") for the electronic certificates of compliance by certifying
24 that the vehicles had been inspected as required when, in fact, they had not.

25 **SEVENTH CAUSE FOR DISCIPLINE**

26 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

27 20. Respondent Dao has subjected his technician license to discipline under
28 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 6, 2007,

1 regarding the electronic certificates of compliance and the vehicles set forth in Table One, above,
2 he violated sections of the California Code of Regulations, title 16, as follows:

3 a. **Section 3340.30, subdivision (a):** Respondent Dao failed to inspect and
4 test the vehicles in accordance with Health and Safety Code section 44012.

5 b. **Section 3340.41, subdivision (c):** Respondent Dao entered false
6 information into the EIS for the electronic certificates of compliance by entering vehicle
7 identification information or emission control information for vehicles other than the vehicles
8 being tested.

9 c. **Section 3340.42:** Respondent Dao failed to conduct the required smog
10 tests and inspections on the vehicles in accordance with the Bureau's specifications.

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 **(Dishonesty, Fraud or Deceit)**

13 21. Respondent Dao has subjected his technician license to discipline under
14 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 6, 2007,
15 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
16 the electronic certificates of compliance for the vehicles set forth in Table One, above, without
17 performing bona fide inspections of the emission control devices and systems on those vehicles,
18 thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program.

20 **SURVEILLANCE OPERATION - SEPTEMBER 7, 2007**

21 22. On or about September 7, 2007, the Bureau performed a videotaped
22 surveillance at Respondent A Plus's facility. The surveillance operation and information
23 obtained from the Bureau's VID revealed that between 1032 hours and 1643 hours, Respondent
24 Dao performed six (6) smog inspections that resulted in the issuance of the electronic certificates
25 of compliance for the vehicles, as set forth in Table Two, below, certifying that he had tested and
26 inspected the vehicles and that the vehicles had been inspected in accordance with the Bureau's
27 requirements. In fact, Respondent Dao had not performed the functional fuel cap leak down tests
28 on any of the six (6) vehicles certified. Additionally, between 1209 hours and 1214 hours,

Respondent Dao certified a 1990 Volkswagen Jetta, California License Plate No. 4THV564, using clean piping methods by using the tail pipe emissions of a vehicle other than the vehicle being certified. Electronic Certificate of Compliance No. MU557519C was issued to the 1990 Volkswagen Jetta.

Table Two

Date and Test Times	Vehicle Certified	Cert Issued	Details
9/7/2007 1032 hours to 1038 hours	1991 Acura Legend Lic. No. 5TQK245	MU557516C	Respondent Dao failed to perform a functional fuel cap leak down test.
9/7/2007 1239 hours to 1248 hours	1997 Ford Probe Lic. No. 3VAJ673	MU557521C	Respondent Dao failed to perform a functional fuel cap leak down test.
9/7/2007 1305 hours to 1315 hours	1991 GMC Safari Lic. No. 5X89026	MU557522C	Respondent Dao failed to perform a functional fuel cap leak down test.
9/7/2007 1413 hours to 1422 hours	1990 Acura Legend Lic. No. 3TEX385	No Cert Issued	Respondent Dao failed to perform a functional fuel cap leak down test.
9/7/2007 1516 hours to 1527 hours	1996 Dodge Caravan Lic. No. 3PHH325	MU557525C	Respondent Dao failed to perform a functional fuel cap leak down test.
9/7/2007 1638 hours to 1643 hours	1990 Acura Legend Lic. No. 3TEX385	MU557527C	Respondent Dao failed to perform a functional fuel cap leak down test.

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

23. Respondent A Plus has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 7, 2007, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading, as follows:

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1 a. Respondent A Plus issued the electronic certificates of compliance for the
2 vehicles set forth in Table Two, above, certifying that the vehicles were inspected in accordance
3 with Bureau requirements when, in fact, functional fuel cap leak down tests had not been
4 performed on any of those vehicles.

5 b. Respondent A Plus issued electronic Certificate of Compliance No.
6 MU557519C for the 1990 Volkswagen Jetta, certifying that the vehicle had been inspected in
7 accordance with Bureau requirements when, in fact, that vehicle had been clean-piped.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 24. Respondent A Plus has subjected her registration to discipline under Code
11 section 9884.7, subdivision (a)(4), in that on or about September 7, 2007, she committed acts
12 which constitute fraud by issuing the electronic certificates of compliance for the 1990
13 Volkswagen Jetta and the vehicles set forth in Table Two, above, without performing bona fide
14 inspections of the emission control devices and systems on those vehicles, thereby depriving the
15 People of the State of California of the protection afforded by the Motor Vehicle Inspection
16 Program.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 **(Violation of the Motor Vehicle Inspection Program)**

19 25. Respondent A Plus has subjected her station license to discipline under
20 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 7, 2007,
21 regarding the electronic certificates of compliance for the 1990 Volkswagen Jetta and the
22 vehicles set forth in Table Two, above, she violated sections of that Code, as follows:

23 a. **Section 44012, subdivision (f):** Respondent A Plus failed to perform
24 emission control tests on the vehicles in accordance with procedures prescribed by the
25 department.

26 b. **Section 44015, subdivision (b):** Respondent A Plus issued the
27 electronic certificates of compliance for those vehicles without properly testing and inspecting
28 the vehicles to determine if they were in compliance with section 44012 of that Code.

1 c. **Section 44059:** Respondent A Plus willfully made false entries for the
2 electronic certificates of compliance by certifying that the vehicles had been inspected as
3 required when, in fact, they had not.

4 **TWELFTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 26. Respondent A Plus has subjected her station license to discipline under
7 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 7, 2007,
8 regarding the electronic certificates of compliance for the 1990 Volkswagen Jetta and the
9 vehicles set forth in Table Two, above, she violated sections of the California Code of
10 Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent A Plus falsely or
12 fraudulently issued the electronic certificates of compliance for those vehicles without
13 performing bona fide inspections of the emission control devices and systems on the vehicles as
14 required by Health and Safety Code section 44012.

15 b. **Section 3340.35, subdivision (c):** Respondent A Plus issued the
16 electronic certificates of compliance for those vehicles even though the vehicles had not been
17 inspected in accordance with section 3340.42 of that Code.

18 c. **Section 3340.42:** Respondent A Plus failed to conduct the required
19 smog tests and inspections on the vehicles in accordance with the Bureau's specifications.

20 **THIRTEENTH CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud or Deceit)**

22 27. Respondent A Plus has subjected her station license to discipline under
23 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 7, 2007,
24 regarding the electronic certificates of compliance for the 1990 Volkswagen Jetta and the
25 vehicles set forth in Table Two, above, she committed acts involving dishonesty, fraud or deceit
26 whereby another was injured by issuing the electronic certificates of compliance for those
27 vehicles when, in fact, the vehicles had not been properly tested and inspected, thereby depriving

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1 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

5 28. Respondent Dao has subjected his technician license to discipline under
6 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 7, 2007,
7 regarding the electronic certificates of compliance for the 1990 Volkswagen Jetta and the
8 vehicles set forth in Table Two, above, he violated sections of that Code, as follows:

9 a. **Section 44012, subdivision (f):** Respondent Dao failed to determine that
10 all emission control devices and systems required by law were installed and functioning correctly
11 on those vehicles in accordance with test procedures.

12 b. **Section 44032:** Respondent Dao failed to perform tests of the emission
13 control devices and systems on those vehicles in accordance with section 44012 of that Code.

14 c. **Section 44059:** Respondent Dao entered false information into the EIS
15 for the electronic certificates of compliance by certifying that the vehicles had been inspected as
16 required when, in fact, they had not.

17 **FIFTEENTH CAUSE FOR DISCIPLINE**

18 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

19 29. Respondent Dao has subjected his technician license to discipline under
20 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 7, 2007,
21 regarding the electronic certificates of compliance for the 1990 Volkswagen Jetta and the
22 vehicles set forth in Table Two, above, he violated sections of the California Code of
23 Regulations, title 16, as follows:

24 a. **Section 3340.30, subdivision (a):** Respondent Dao failed to inspect and
25 test the vehicles in accordance with Health and Safety Code sections 44012 and 44035 and
26 California Code of Regulations, title 16, section 3340.42.

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1 b. Section 3340.41, subdivision (c):

2 i. Respondent Dao entered false information into the EIS for the
3 electronic certificates of compliance for the vehicles set forth in Table Two, above, by entering
4 "pass" for the functional portion of the smog test even though he failed to perform the functional
5 fuel cap leak down test on those vehicles.

6 ii. Respondent Dao entered false information into the EIS for
7 electronic Certificate of Compliance No. MU557519C for the 1990 Volkswagen Jetta by entering
8 vehicle identification information or emission control information for a vehicle other than the
9 vehicle being tested.

10 c. Section 3340.42: Respondent Dao failed to conduct the required smog
11 tests and inspections on the vehicles in accordance with the Bureau's specifications.

12 SIXTEENTH CAUSE FOR DISCIPLINE

13 (Dishonesty, Fraud or Deceit)

14 30. Respondent Dao has subjected his technician license to discipline under
15 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 7, 2007,
16 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
17 the electronic certificates of compliance for the 1990 Volkswagen Jetta and the vehicles set forth
18 in Table Two, above, without performing bona fide inspections of the emission control devices
19 and systems on those vehicles, thereby depriving the People of the State of California of the
20 protection afforded by the Motor Vehicle Inspection Program.

21 SURVEILLANCE OPERATION - SEPTEMBER 13, 2007

22 31. On or about September 13, 2007, the Bureau performed a videotaped
23 surveillance at Respondent A Plus's facility. The surveillance operation and information
24 obtained from the Bureau's VID revealed that between 1435 hours and 1442 hours, Respondent
25 Dao performed one (1) smog inspection that resulted in the issuance of electronic Certificate of
26 Compliance No. MU637474C for a 2000 Toyota Echo, California License Plate No. 4YVY892,
27 certifying that he had tested and inspected the vehicle in accordance with Bureau requirements.

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1 In fact, Respondent Dao failed to perform a functional fuel cap leak down test on the vehicle
2 certified.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 **(Misleading Statements)**

5 32. Respondent A Plus has subjected her registration to discipline under Code
6 section 9884.7, subdivision (a)(1), in that on or about September 13, 2007, she made statements
7 which she knew or which by exercise of reasonable care she should have known were untrue or
8 misleading by issuing electronic Certificate of Compliance No. MU637474C for the 2000 Toyota
9 Echo, certifying that the vehicle had been inspected in accordance with Bureau requirements. In
10 fact, Respondent Dao failed to perform the functional fuel cap leak down test on that vehicle.

11 **EIGHTEENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 33. Respondent A Plus has subjected her registration to discipline under Code
14 section 9884.7, subdivision (a)(4), in that on or about September 13, 2007, she committed acts
15 which constitute fraud by issuing electronic Certificate of Compliance No. MU637474C for the
16 2000 Toyota Echo, without performing a bona fide inspection of the emission control devices
17 and systems on that vehicle, thereby depriving the People of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **NINETEENTH CAUSE FOR DISCIPLINE**

20 **(Violation of the Motor Vehicle Inspection Program)**

21 34. Respondent A Plus has subjected her station license to discipline under
22 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 13, 2007,
23 regarding electronic Certificate of Compliance No. MU637474C for the 2000 Toyota Echo, she
24 violated sections of that Code, as follows:

25 a. **Section 44012, subdivision (f):** Respondent A Plus failed to perform
26 emission control tests on the vehicle in accordance with procedures prescribed by the department.

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1 b. **Section 44015, subdivision (b):** Respondent A Plus issued the
2 electronic certificate of compliance for that vehicle without properly testing and inspecting the
3 vehicle to determine if it was in compliance with section 44012 of that Code.

4 c. **Section 44059:** Respondent A Plus willfully made false entries for the
5 electronic certificate of compliance by certifying that the vehicle had been inspected as required
6 when, in fact, it had not.

7 **TWENTIETH CAUSE FOR DISCIPLINE**

8 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

9 35. Respondent A Plus has subjected her station license to discipline under
10 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 13, 2007,
11 regarding electronic Certificate of Compliance No. MU637474C for the 2000 Toyota Echo, she
12 violated sections of the California Code of Regulations, title 16, as follows:

13 a. **Section 3340.24, subdivision (c):** Respondent A Plus falsely or
14 fraudulently issued the electronic certificate of compliance for that vehicle without performing a
15 bona fide inspection of the emission control devices and systems on the vehicle as required by
16 Health and Safety Code section 44012.

17 b. **Section 3340.35, subdivision (c):** Respondent A Plus issued the
18 electronic certificate of compliance for that vehicle even though the vehicle had not been
19 inspected in accordance with section 3340.42 of that Code.

20 c. **Section 3340.42:** Respondent A Plus failed to conduct the required
21 smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

22 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

23 **(Dishonesty, Fraud or Deceit)**

24 36. Respondent A Plus has subjected her station license to discipline under
25 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 13, 2007,
26 regarding electronic Certificate of Compliance No. MU637474C for the 2000 Toyota Echo, she
27 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the
28 electronic certificate of compliance for that vehicle when, in fact, the vehicle had not been

properly tested and inspected, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

37. Respondent Dao has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 13, 2007, regarding electronic Certificate of Compliance No. MU637474C for the 2000 Toyota Echo, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent Dao failed to determine that all emission control devices and systems required by law were installed and functioning correctly on that vehicle in accordance with test procedures.

b. **Section 44032:** Respondent Dao failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

c. **Section 44059:** Respondent Dao entered false information into the EIS for the electronic certificate of compliance by certifying that the vehicle had been inspected as required when, in fact, it had not.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

38. Respondent Dao has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 13, 2007, regarding electronic Certificate of Compliance No. MU637474C for the 2000 Toyota Echo, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent Dao failed to inspect and test that vehicle in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Dao entered false information into the EIS for the electronic certificate of compliance by entering "pass" for the

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1 functional portion of the smog test even though he failed to perform the functional fuel cap leak
2 down test on that vehicle.

3 c. **Section 3340.42:** Respondent Dao failed to conduct the required smog
4 tests and inspections on that vehicle in accordance with the Bureau's specifications.

5 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud or Deceit)**

7 39. Respondent Dao has subjected his technician license to discipline under
8 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 13, 2007,
9 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
10 electronic Certificate of Compliance No. MU637474C for the 2000 Toyota Echo without
11 performing a bona fide inspection of the emission control devices and systems on that vehicle,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **SURVEILLANCE OPERATION - SEPTEMBER 14, 2007**

15 40. On or about September 14, 2007, the Bureau performed a videotaped
16 surveillance at Respondent A Plus's facility. The surveillance operation and information
17 obtained from the Bureau's VID revealed that between 1027 hours and 1703 hours, Respondent
18 Dao performed three (3) smog inspections that resulted in the issuance of the electronic
19 certificates of compliance for the vehicles set forth in Table Three, below, certifying that he had
20 tested and inspected the vehicles and that the vehicles were in compliance with applicable laws
21 and regulations. In fact, Respondent Dao performed the smog inspections using the clean-piping
22 method by using the tail pipe emissions of vehicles other than the vehicles being certified in
23 order to issue the certificates of compliance. The vehicles certified were not in the test bay at the
24 time of the smog inspections.

25 41. On the same day, between 1634 hours and 1643 hours, Respondent Dao
26 also performed a smog inspection on a 1991 Nissan Sentra, California License Plate No.
27 2VKZ148, resulting in the issuance of electronic Certificate of Compliance No. MU637481C,

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1 certifying that he had tested and inspected the vehicle in accordance with Bureau requirements.

2 In fact, Respondent Dao failed to perform a functional fuel cap leak down test on that vehicle.

3 **Table Three**

4

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
5 9/14/2007 6 1027 hours 7 to 8 1038 hours	1988 Chevrolet G30 Chevy Van Lic. No. 4R63167	Ford pickup truck Lic. No. 6L91126	MU637476C
9 9/14/2007 10 1647 hours 11 to 12 1651 hours	1991 Toyota Previa Lic. No. 2UPW745	Honda Accord 4 door wagon Lic. No. 5HSD873	MU637482C
13 9/14/2007 14 1655 hours 15 to 16 1703 hours	2000 Ford Explorer 4 door Lic. No. 4REN456	Honda Odyssey Lic. No. 5NCR326	MU637483C

17 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 42. Respondent A Plus has subjected her registration to discipline under Code
20 section 9884.7, subdivision (a)(1), in that on or about September 14, 2007, she made statements
21 which she knew or which by exercise of reasonable care she should have known were untrue or
22 misleading, as follows:

23 a. Respondent Dao issued the electronic certificates of compliance for the
24 vehicles set forth in Table Three, above, certifying that the vehicles were in compliance with
25 applicable laws and regulations when, in fact, the vehicles had been clean-piped.

26 b. Respondent Dao issued the electronic certificate of compliance set forth in
27 paragraph 41, above, certifying that the 1991 Nissan Sentra had been tested and inspected in
28 accordance with Bureau requirements when, in fact, Respondent Dao failed to perform a
functional fuel cap leak down test on that vehicle.

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1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 43. Respondent A Plus has subjected her registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about September 14, 2007, she committed acts
5 which constitute fraud by issuing the electronic certificates of compliance for the vehicles set
6 forth in Table Three and paragraph 41, above, without performing bona fide inspections of the
7 emission control devices and systems on those vehicles, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

10 **(Violation of the Motor Vehicle Inspection Program)**

11 44. Respondent A Plus has subjected her station license to discipline under
12 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 14, 2007,
13 regarding the electronic certificates of compliance and the vehicles set forth in Table Three and
14 paragraph 41, above, she violated sections of that Code, as follows:

15 a. **Section 44012, subdivision (f):** Respondent A Plus failed to perform
16 emission control tests on the vehicles in accordance with procedures prescribed by the
17 department.

18 b. **Section 44015, subdivision (b):** Respondent A Plus issued the
19 electronic certificates of compliance for those vehicles without properly testing and inspecting
20 the vehicles to determine if they were in compliance with section 44012 of that Code.

21 c. **Section 44059:** Respondent A Plus willfully made false entries for the
22 electronic certificates of compliance by certifying that the vehicles had been inspected as
23 required when, in fact, they had not.

24 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

25 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

26 45. Respondent A Plus has subjected her station license to discipline under
27 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 14, 2007,
28 regarding the electronic certificates of compliance and the vehicles set forth in Table Three and

1 paragraph 41, above, she violated sections of the California Code of Regulations, title 16, as
2 follows:

3 a. Section 3340.24, subdivision (c): Respondent A Plus falsely or
4 fraudulently issued the electronic certificates of compliance for those vehicles without
5 performing bona fide inspections of the emission control devices and systems on the vehicles as
6 required by Health and Safety Code section 44012.

7 b. Section 3340.35, subdivision (c): Respondent A Plus issued the
8 electronic certificates of compliance for those vehicles even though the vehicles had not been
9 inspected in accordance with section 3340.42 of that Code.

10 c. Section 3340.42: Respondent A Plus failed to conduct the required
11 smog tests and inspections on the vehicles in accordance with the Bureau's specifications.

12 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

14 46. Respondent A Plus has subjected her station license to discipline under
15 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 14, 2007,
16 regarding the electronic certificates of compliance and the vehicles set forth in Table Three and
17 paragraph 41, above, she committed acts involving dishonesty, fraud or deceit whereby another
18 was injured by issuing the electronic certificates of compliance for those vehicles when, in fact,
19 the vehicles had not been properly tested and inspected, thereby depriving the People of the State
20 of California of the protection afforded by the Motor Vehicle Inspection Program.

21 **THIRTIETH CAUSE FOR DISCIPLINE**

22 **(Violations of the Motor Vehicle Inspection Program)**

23 47. Respondent Dao has subjected his technician license to discipline under
24 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 14, 2007,
25 regarding the electronic certificates of compliance and the vehicles set forth in Table Three and
26 paragraph 41, above, he violated sections of that Code, as follows:

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1 a. **Section 44012, subdivision (f):** Respondent Dao failed to determine that
2 all emission control devices and systems required by law were installed and functioning correctly
3 on those vehicles in accordance with test procedures.

4 b. **Section 44032:** Respondent Dao failed to perform tests of the emission
5 control devices and systems on those vehicles in accordance with section 44012 of that Code.

6 c. **Section 44059:** Respondent Dao entered false information into the EIS
7 for the electronic certificates of compliance by certifying that the vehicles had been inspected as
8 required when, in fact, they had not.

9 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

11 48. Respondent Dao has subjected his technician license to discipline under
12 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 14, 2007,
13 regarding the electronic certificates of compliance and the vehicles set forth in Table Three and
14 paragraph 41, above, he violated sections of the California Code of Regulations, title 16, as
15 follows:

16 a. **Section 3340.30, subdivision (a):** Respondent Dao failed to inspect and
17 test the vehicles in accordance with Health and Safety Code section 44012.

18 b. **Section 3340.41, subdivision (c):**

19 i. Respondent Dao entered false information into the EIS for the
20 electronic certificates of compliance, regarding the vehicles in Table Three, above, by entering
21 vehicle identification information or emission control information for vehicles other than the
22 vehicles being tested.

23 ii. Respondent Dao entered false information into the EIS for the
24 electronic certificate of compliance, regarding the vehicle set forth in paragraph 41, above, by
25 entering "pass" for the functional portion of the smog inspection when, in fact, he failed to
26 perform a functional fuel cap leak down test on that vehicle.

27 c. **Section 3340.42:** Respondent Dao failed to conduct the required smog
28 tests and inspections on the vehicles in accordance with the Bureau's specifications.

1 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit)**

3 49. Respondent Dao has subjected his technician license to discipline under
4 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 14, 2007,
5 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
6 the electronic certificates of compliance for the vehicles set forth in Table Three and paragraph
7 41, above, without performing bona fide inspections of the emission control devices and systems
8 on those vehicles, thereby depriving the People of the State of California of the protection
9 afforded by the Motor Vehicle Inspection Program.

10 **PRIOR CITATIONS**

11 50. To determine the degree of discipline, if any, to be imposed on
12 Respondents A Plus and Dao, Complainant alleges, as follows:

13 **Respondent A Plus**

14 a. On or about May 17, 2007, the Bureau issued Citation No. C07-0906
15 against Respondent A Plus's registration and station licenses for violations of Health & Safety
16 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
17 control devices according to procedures prescribed by the department), and California Code of
18 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
19 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
20 Bureau undercover vehicle with a missing positive crankcase ventilation system. The Bureau
21 assessed civil penalties totaling \$500 against Respondent Express for the violations. Respondent
22 A Plus complied with this citation.

23 **Respondent Dao**

24 b. On or about May 17, 2007, the Bureau issued Citation No. M07-0907
25 against Respondent Dao's technician license for violations of Health & Safety Code section
26 44032, (failure to perform a visual/functional check of emission control devices according to
27 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
28 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of

1 compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system.
2 The Bureau directed Respondent Dao to complete an 8-hour training course. Respondent Dao
3 complied with this citation.

4 OTHER MATTERS

5 51. Under Code section 9884.7, subdivision (c), the director may invalidate
6 temporarily or permanently or refuse to validate, the registrations for all places of business
7 operated in this state by Song Soo Jin, doing business as A Plus Smog Test Only, upon a finding
8 that she has, or is, engaged in a course of repeated and willful violations of the laws and
9 regulations pertaining to an automotive repair dealer.

10 52. Under Health and Safety Code section 44072.8, if Smog Check Test Only
11 Station License Number TG 228980, issued to Song Soo Jin, doing business as A Plus Smog
12 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
13 of said licensee may be likewise revoked or suspended by the director.

14 53. Under Health and Safety Code section 44072.8, if Advanced Emission
15 Specialist Technician License Number EA 032988, issued to Michael Dao, is revoked or
16 suspended, any additional license issued under this chapter in the name of said licensee may be
17 likewise revoked or suspended by the director.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

21 1. Temporarily or permanently invalidating Automotive Repair Dealer
22 Registration Number AG 228980, issued to Song Soo Jin, doing business as A Plus Smog Test
23 Only;

24 2. Temporarily or permanently invaliding any other automotive repair dealer
25 registration issued to Song Soo Jin, doing business as A Plus Smog Test Only;

26 3. Revoking or suspending Smog Check Test Only Station License Number
27 TG 228980, issued to Song Soo Jin, doing business as A Plus Smog Test Only;

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1 4. Revoking or suspending any additional license issued under this chapter in
2 the name of Song Soo Jin, doing business as A Plus Smog Test Only;

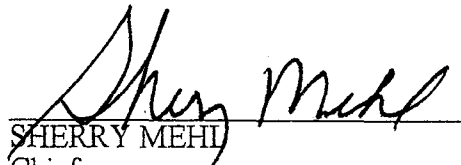
3 5. Revoking or suspending Advanced Emission Specialist Technician
4 License Number EA 032988, issued to Michael Dao;

5 6. Revoking or suspending any additional license issued under this chapter in
6 the name of Michael Dao;

7 7. Ordering Song Soo Jin and Michael Dao to pay the Bureau of Automotive
8 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code
9 section 125.3; and,

10 8. Taking such other and further action as deemed necessary and proper.

11
12 DATED: 4-16-08

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16 SHERRY MEHL
17 Chief
18 Bureau of Automotive Repair
19 Department of Consumer Affairs
20 State of California
21 Complainant
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